

Kirk D. Miller  
*Kirk D. Miller, P.S.*  
211 E. Sprague Ave.  
Spokane, WA 99202  
(509) 413-1494  
[kmiller@millerlawspokane.com](mailto:kmiller@millerlawspokane.com)

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

TONI BARNES,

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC., a  
foreign corporation, and TAMIA  
STOKES, an individual,

Defendants.

Case No.: CV-12-676-TOR

COMPLAINT

[FDCPA]

**I. JURISDICTION**

1.1 Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to  
15 U.S.C. § 1692k(d).

1.2 This action arises out of Defendant's violations of the Fair Debt  
Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") and their  
agents in their illegal efforts to collect a consumer debt from Plaintiff.

COMPLAINT -1

KIRK D. MILLER, P.S.  
211 E. SPRAGUE AVE.  
Spokane, WA 99202  
Phone: (509)413-1494  
Fax: (509) 413-1724



1 out of a transaction primarily for personal, family, or household  
2 purposes.

3  
4 2.7 Defendant NCO Financial is a “debt collector” as defined by the  
5 FDCPA, 15 U.S.C. §1692(a)(6).

6 2.8 Defendant NCO Financial is in the business of collecting debts.

7  
8 2.9 Defendant NCO Financial uses interstate commerce and the mails for  
9 the collection of debts.

10 2.10 Defendant NCO Financial regularly collects or attempts to collect,  
11 directly or indirectly, debts owed or due, or asserted to be owed or due  
12 to another using the telephone and mail.  
13

14 **III. FACTUAL ALLEGATIONS**

15 3.1 Plaintiff allegedly incurred a financial obligation that was primarily  
16 for personal, family or household purposes and is therefore a “debt” as  
17 that term is defined by 15 U.S.C. § 1692a(5).  
18

19 3.2 The debt that Defendant NCO Financial claims the Plaintiff owes is  
20 an alleged obligation to pay money arising out of a transaction for a  
21 student loan.  
22

23 3.3 Plaintiff is permanently disabled from both physical and mental  
24 impairments.  
25

3.4 Plaintiff has received social security benefits for over twenty years.

1           3.5    Plaintiff was last employed in or about 1996.

2           3.6    Plaintiff briefly attended Spokane Community College in and around  
3                   2001 but was unable to complete any program.

4           3.7    Plaintiff originally deferred repayment of her student loans until 2006.

5           3.8    Plaintiff was married June 12, 2004.

6           3.9    Plaintiff did not acquire any student loans during her marriage.

7           3.10   In 2006, Plaintiff applied to the United States Department of Education  
8                   (hereinafter “Dept. of Education”) for an administrative discharge of her  
9                   student loans due to her disability.

10          3.11   Plaintiff’s application for administrative discharge of her student loan  
11                   obligation was supported by medical documentation.

12          3.12   In 2006, Plaintiff believed that she had completed all necessary  
13                   paperwork that same year and that her student loans would be  
14                   discharged after a waiting period.

15          3.13   Plaintiff received no communications from any person or entity  
16                   regarding her student loans between 2007 and 2011.

17          3.14   In December 2011, Plaintiff received a dunning letter from Defendant  
18                   NCO Financial dated December 5, 2011.

1       3.15 The December 5, 2011 dunning letter from Defendant claimed that  
2               twenty-eight thousand seven hundred fifty-seven dollars and eighty-four  
3               cents (\$28,757.84) was due on Plaintiff's student loan.  
4

5       3.16 Five thousand six hundred twenty-nine dollars and forty-five cents  
6               (\$5,629.45) in "penalty charges" and four thousand eight dollars and  
7               eleven cents (\$4908.11) in "interest" were included in the "Total  
8               Balance" claimed due in the December 5, 2011 dunning letter.  
9

10       3.17 In response to the December 5, 2011 dunning letter from Defendant,  
11               Plaintiff Toni Barnes called and spoke with an employee of the  
12               Defendant who identified herself as "Jennifer".  
13

14       3.18 Plaintiff Barnes stated to Jennifer that she didn't understand why  
15               Defendant was sending a collection letter to her.  
16

17       3.19 Plaintiff Barnes stated to Jennifer that she believed her student loan  
18               obligation had been administratively discharged due to her disability.  
19

20       3.20 Plaintiff Barnes disputed the debt.  
21

22       3.21 Jennifer advised the Plaintiff to call the Dept. of Education to find out  
23               why her student loan obligation had not been discharged.  
24

25       3.22 Plaintiff Barnes immediately called the Dept. of Education and spoke  
             with a female representative.

1           3.23 Plaintiff Barnes inquired with the Dept. of Education representative why  
2           her student loan obligation had not been discharged due to her  
3           disability.  
4

5           3.24 The female Dept. of Education employee stated to the Plaintiff that a  
6           required form was missing in the Dept. of Education system.  
7

8           3.25 The female Dept. of Education employee stated to the Plaintiff that the  
9           Dept. of Education records showed no communications between the  
10          Dept. of Education and the Plaintiff since 2006.  
11

12          3.26 The female Dept. of Education employee stated that new disability  
13          forms would be sent to the Plaintiff.  
14

15          3.27 Plaintiff received the Dept. of Education disability forms in January  
16          2012 and returned them completed with necessary medical  
17          documentation.  
18

19          3.28 Plaintiff's student loans are currently deferred pending administrative  
20          discharge due to her disability.  
21

22          3.29 Plaintiff's parent's primary residence is in Spokane, Washington.  
23

24          3.30 Plaintiff's parents have a home in Yuma, Arizona, where they typically  
25          spend four months per year.

          3.31 Plaintiff's parents left for their winter home in Yuma, Arizona, on  
          December 26, 2011.

1 3.32 Plaintiff agreed to stop by her parents Spokane, WA house periodically  
2 while her parents were away to check phone messages and to make sure  
3 that the home is secure.  
4

5 3.33 On January 14, 2012, Plaintiff visited her parent's Spokane, WA house  
6 and listened to her parent's answering machine messages.  
7

8 3.34 The Plaintiff's January 14, 2012 visit to her parent's house was the first  
9 time Plaintiff entered the house or listened to her parent's answering  
10 machine since her parents left for Arizona.  
11

12 3.35 One of the messages on Plaintiff's parent's answering machine that the  
13 Plaintiff heard on January 14, 2012 was left for the Plaintiff (hereinafter  
14 "the January 14, 2012 message")  
15

16 3.36 The January 14, 2012 message did not identify the caller.  
17

18 3.37 The January 14, 2012 message did not disclose that the communication  
19 is from a debt collector.  
20

21 3.38 The January 14, 2012 message requested that Plaintiff call phone  
22 number 866-276-3167.  
23

24 3.39 The phone number stated in the January 14, 2012 message is the direct  
25 telephone number for "Tamia Stokes".  
26

3.40 Ms. Stokes is an employee of Defendant NCO Financial.

1           3.41 At all times relevant to this action, Ms. Stokes was acting within the  
2           course and scope of her duties as an employee of Defendant NCO  
3           Financial.

4  
5           3.42 One of Ms. Stokes' job duties while working for Defendant NCO  
6           Financial is or was to collect debts or alleged debts that arose from  
7           transactions primarily for personal, family, or household purposes.

8  
9           3.43 Ms. Stokes regularly uses instrumentalities of interstate commerce,  
10          including the telephone, to collect debts.

11          3.44 Tamia Stokes is a debt collector.

12  
13          3.45 On January 14, 2012, Plaintiff called Tamia Stokes at the number stated  
14          in the January 14, 2012 message.

15          3.46 Tamia Stokes did not answer her telephone when the Plaintiff called on  
16          January 14, 2012 and Plaintiff did not leave a voice message for Ms.  
17          Stokes.

18  
19          3.47 On January 16, 2012, the following Monday, Plaintiff called Ms.  
20          Stokes at approximately 9:30 A.M.

21  
22          3.48 Ms. Stokes stated to Plaintiff Barnes that she was collecting on the  
23          Plaintiff's student loan.

24          3.49 Ms. Stokes stated that the Plaintiff's account was "in garnishment".  
25

1 3.50 Ms. Stokes stated that if the Plaintiff wanted to get out of “garnishment”  
2 that the Plaintiff could set up payment arrangements.

3 3.51 Plaintiff told Ms. Stokes that she could not afford to make payments.  
4

5 3.52 Ms. Stokes threatened Plaintiff Barnes that if she did not make payment  
6 arrangements then the Defendant could garnish up to twenty-five  
7 percent (25%) of her social security income.  
8

9 3.53 Plaintiff Barnes receives six hundred fifty-one dollars (\$651.00) per  
10 month from social security.

11 3.54 Plaintiff’s income from social security is less than nine thousand  
12 dollars (\$9,000.00) per year.  
13

14 3.55 All of Plaintiff’s income from social security is exempt from  
15 garnishment.  
16

17 3.56 Defendant has never been authorized by the United States government  
18 or any agency thereof to garnish any money from the Plaintiff.

19 3.57 Defendant has never been authorized by any entity to garnish any  
20 money held by the Plaintiff.  
21

22 3.58 No law or contract allows the Defendant to garnish any amount of the  
23 Plaintiff’s income derived from social security.

24 3.59 Garnishing any amount of the Plaintiff’s social security money would  
25 be illegal. 42 U.S.C. § 407(a); 31 U.S.C. § 3716(c)(3)(A)(i).

1 3.60 Ms. Stokes also stated that the Defendant could garnish the Plaintiff's  
2 taxes.

3  
4 3.61 Plaintiff Barnes understood Ms. Stokes' threat to mean that her and her  
5 husband's 2011 income tax return would be garnished by the  
6 Defendant.

7  
8 3.62 Ms. Stokes intended to threaten the Plaintiff that the Plaintiff's 2011  
9 income tax return would be garnished by the Defendant.

10 3.63 Ms. Stokes' statement that the Plaintiff's taxes would be garnished was  
11 false and misleading.

12  
13 3.64 In January 2012, Defendant was not authorized or otherwise legally  
14 allowed to garnish the Plaintiff's income tax return.

15 3.65 The Defendant has never been authorized by the United States  
16 government or any other entity to garnish the Plaintiff's income tax  
17 return.

18  
19 3.66 Ms. Stokes stated that if the Plaintiff agreed to make payments to the  
20 Defendant, then the Plaintiff's social security income would not be  
21 garnished by the Defendant.

22  
23 3.67 Ms. Stokes threat to garnish Plaintiff's social security was a false  
24 statement.

1 3.68 Ms. Stokes threat to garnish Plaintiff's social security income was a  
2 misleading statement.

3  
4 3.69 In January 2012 Defendant was not authorized or otherwise legally  
5 allowed to garnish the Plaintiff's social security income.

6 3.70 At no time has the Defendant been authorized or otherwise legally  
7 allowed to garnish the Plaintiff's social security income.

8  
9 3.71 Plaintiff was terrified by the Defendant's threat to garnish her social  
10 security income.

11 3.72 Ms. Stokes directed the Plaintiff to provide information about the  
12 Plaintiff's monthly expenses.

13  
14 3.73 Plaintiff Barnes reiterated that she cannot afford payments and stated to  
15 Ms. Stokes that she wanted to discuss the matter with her husband.

16  
17 3.74 Ms. Stokes stated that the Plaintiff needed to make payment  
18 arrangements immediately to avoid garnishment of the Plaintiff's social  
19 security money.

20 3.75 Ms. Stokes' statement that payment arrangements with the Defendant  
21 were needed to prevent garnishment of the Plaintiff's social security  
22 was false and misleading.  
23  
24  
25

1 3.76 Ms. Stokes stated that the lowest payment that the Defendant could  
2 accept from the Plaintiff would be two hundred two dollars (\$202.00)  
3 per month.  
4

5 3.77 Ms. Stokes' statement that two hundred two dollars (\$202.00) was the  
6 lowest payment she could accept was a false statement.  
7

8 3.78 Ms. Stokes' statement that two hundred two dollars (\$202.00) was the  
9 lowest payment she could accept was a misleading statement.

10 3.79 Ms. Stokes stated that the Defendant would require a payment in the  
11 amount of twenty-five dollars (\$25.00) for the month of January.  
12

13 3.80 Plaintiff believed that if she did not pay the twenty five dollars (\$25.00)  
14 to Ms. Stokes and also agree to pay two hundred two dollars (\$202.00)  
15 per month, then Plaintiff's social security would be garnished.  
16

17 3.81 Plaintiff gave her checking account number to Ms. Stokes so that Ms.  
18 Stokes could take twenty five dollars (\$25.00) from the Plaintiff's  
19 checking account immediately.  
20

21 3.82 Plaintiff authorized Ms. Stokes to withdraw two hundred two dollars  
22 (\$202.00) per month from her checking account the following month.

23 3.83 Plaintiff authorized the withdrawals from her checking account because  
24 she believed that her social security money and 2011 tax return would  
25 be garnished if she did not.

1           3.84 While Plaintiff Barnes was reading her checking account information to  
2           Ms. Stokes, Plaintiff lost control of her bladder due to the extreme fear  
3           and emotional distress that she was experiencing.

4  
5           3.85 Ms. Stokes advised Plaintiff that if any payments were missed, then the  
6           Plaintiff's account would be returned to "garnishment status".

7  
8           3.86 Plaintiff interpreted Ms. Stokes' threat to return the account to  
9           garnishment status to mean that if a payment was missed then  
10          Defendant could garnish her social security income and income tax  
11          returns.

12  
13          3.87 Ms. Stokes' threat to return the account to garnishment status if any  
14          payments were missed was a misleading statement.

15          3.88 Plaintiff called the U.S. Department of Treasury on January 16, 2012 to  
16          inquire whether her 2011 income tax return would be garnished.

17  
18          3.89 Plaintiff was informed by the U.S. Department of Treasury that  
19          Plaintiff's 2011 income tax return could not be garnished by the  
20          Defendant.

21  
22          3.90 Plaintiff called Defendant again on January 17, 2012 at approximately  
23          12:10 P.M. and spoke with "Ms. Arcadia".

24          3.91 Ms. Arcadia is an employee of Defendant NCO Financial.  
25

1 3.92 At all times relevant to this action, Ms. Arcadia was acting within the  
2 course and scope of her duties as an employee of Defendant NCO  
3 Financial.  
4

5 3.93 One of Ms. Arcadia's job duties while working for Defendant NCO  
6 Financial is or was to collect debts or alleged debts that arose from  
7 transactions primarily for personal, family, or household purposes.  
8

9 3.94 Ms. Arcadia regularly uses instrumentalities of interstate commerce,  
10 including the telephone, to collect debts.  
11

12 3.95 Ms. Arcadia is a debt collector.

13 3.96 Plaintiff Barnes told Ms. Arcadia that she wanted to cancel the payment  
14 Plaintiff had set up the previous day.

15 3.97 Ms. Arcadia stated that she would inform Ms. Stokes of Plaintiff's  
16 request.  
17

18 3.98 Ms. Arcadia stated that if there were no payment arrangements then the  
19 garnishments would continue.

20 3.99 Plaintiff Barnes closed her bank account to avoid the Defendant  
21 withdrawing money from it.  
22

23 3.100 Ms. Arcadia's threat of garnishment was a false statement.

24 3.101 Ms. Arcadia's threat of garnishment was a misleading statement.  
25

1 3.102 No money was garnished by the Defendant from the Plaintiff at any  
2 time.

3  
4 **IV. TRIAL BY JURY**

5 4.1 Plaintiff is entitled to and hereby respectfully demands a trial by jury  
6 on all issues so triable. US Const. amend. 7. Fed.R.Civ.P. 38.

7  
8 **V. CAUSE OF ACTION**

9 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

10 **15 U.S.C. § 1692 et seq.**

11 5.1 Plaintiff incorporates by reference all of the above paragraphs of this  
12 Complaint as though fully stated herein.

13  
14 5.2 Defendant NCO Financial violated 15 U.S.C. § 1692e(11) by failing to  
15 disclose in the answering machine message left for the Plaintiff in  
16 January 2012 that the Defendant is a debt collector.

17  
18 5.3 Defendant NCO Financial violated 15 U.S.C. § 1692(e)(2)(A) by  
19 making false, deceptive and misleading statements which falsely  
20 represented the character, amount, or legal status of a debt.

21  
22 5.4 Defendant NCO Financial violated 15 U.S.C. § 1692(e)(4) by  
23 representing that nonpayment of any debt will result in the arrest or  
24 imprisonment of any person or seizure, garnishment, attachment, or  
25

1 sale of any property or wages of any person when such action may not  
2 lawfully be taken.

3  
4 5.5 Defendant NCO Financial violated 15 U.S.C. § 1692(e)(5) by  
5 threatening to take and taking action which cannot lawfully be taken.

6 5.6 Defendant NCO Financial violated 15 U.S.C. § 1692(e)(10) by using  
7 false representations and deceptive means to collect or attempt to  
8 collect a debt.

9  
10 5.7 Defendant NCO Financial violated 15 U.S.C. § 1692f by using unfair  
11 or unconscionable means to collect or attempt to collect a debt.

12  
13 5.8 As a result of Defendant's violations of the FDCPA, Plaintiff is  
14 entitled to statutory damages in an amount up to \$1,000.00 pursuant to  
15 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs  
16 pursuant to 15 U.S.C. § 1692k(a)(3), from each and every Defendant  
17 herein.

18  
19 **VI. PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant:

21  
22 6.1 For an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C.  
23 §1692k(a)(2)(A) against the Defendant and for the Plaintiff;

24 6.2 Actual damages;

